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GOVERNMENT OF INDIA

MINISTRY OF LABOUR.

NOTIFICATION

New Delhi the 12th September 1949

No. LR.4(95).—In pursuance of Section 17 of the Industrial Disputes Act 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Dhanbad in the industrial dispute between the workmen of the Bararee Colliery, Jealgora and their management, namely, the East India Coal Company Ltd.—

Reference No 7 of 1949

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL DHANBAD
IN THE MATTER OF AN INDUSTRIAL DISPUTE BETWEEN THE
WORKMEN OF THE BARAREE COLLIERY, AND THEIR MANAGE-
MENT NAMELY, THE EAST INDIA COAL COMPANY LIMITED IN
RESPECT OF THE REINSTATEMENT OF TUNNU RAM CHAMAR,
EX-MINER S SIRDAR

PRESENT

Shri S P Vaima, Barrister-at-Law,

Chairman, Central Government Industrial Tribunal DHANBAD

For the Colliery. Sri Sen, of the Orr Dignam & Co

For the Unions (1) Sri K L Paul, Pleader for the East India Coal Co
Workers Union, and with the General Secretary of
the Union Sri Satya Sen.

(2) Sri S. S. Mukerjee, Advocate, on behalf of Tunnu
Ram, Chamar, Ex-Miner's Sirdar through the
Union Bararee Congress Khan Mazdar Sangh

AWARD

This is a reference by the Government of India by an Order No LR 4(95),
dated 30th June 1949. It runs as follows:

"Whereas an industrial dispute has arisen between the workmen of
the Bararee Colliery, Jealgora and their management, namely,
the East India Coal Company Ltd, in respect of the re-in-
statement of Tunnu Ram Chamar, ex-miner's Sirdar;

And, whereas the Central Government considers it desirable to
refer the dispute for adjudication;

[1775]

Now, therefore, in exercise of the powers conferred by clause (2) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (XIV of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Industrial Tribunal at Dhanbad constituted under Section 7 of the said Act."

2. The East India Coal Company was represented by Sri S. Sen of Orr Dignan & Co, and the East India Coal Workers Union was represented by Sri K. L. Paul, and Tunnu Ram Chamar appeared as a member of the Baraee Congress Khan Mazdur Sangh through Sri S. S. Mukherjee

3. In order to understand the points raised in the case it is necessary to give the history of the dispute. Tunnu Ram Chamar was appointed as a miner's sirdar in the year 1928. His father was also a sirdar. The duties of a sirdar will be mentioned later on when dealing with some of the points raised in this connection. On 15th August 1946 a criminal case was started at the instance of Tunnu Ram Chamar against Dargahi, Ram Adhar, Gauban, Jadeo, Raghunath, Jawahir, Gobardhan, Sheo Tahal under Section 147 of the Indian Penal Code. In that case the judgment was delivered on the 9th April 1947. The first five were convicted and sentenced to pay fines. Ram Adhar, Sheo Tahal and Gobardhan were acquitted. They were members of the East India Coal Workers Union which I shall refer to as the workers Union henceforth. On the 10th of April 1947 a strike was started on behalf of the Worker's Union asking that Tunnu Ram Chamar should be dismissed. This Workers Union was started in the year 1939 but its registration was cancelled in 1942-43. Later on on the 4th February 1947 this Union was registered again. During 1st April 1947 to 31st March 1948 the Union had about 1268 members but in July 1949 upto 12th August 1949 the strength of the Union has fallen to 994 members. On the 8th May 1947 a sort of complaint which is referred to as a charge sheet by the parties was drawn up by Dargahi and Ram Adhar against Tunnu Ram Chamar and was filed before the Labour Commissioner to the Government of Bihar, and a copy of this was sent to the management. A reply to that charge sheet was given by Tunnu Ram Chamar in which he refuted the charges. The matter was referred to the Honourable Sri B. N. Jha for arbitration, whom I shall refer to henceforth as the Arbitrator. The award was given by the Arbitrator on the 18th June 1947 and it is in the following terms.

"By their application dated the 4th May 1947 both the Management and the Labour Union of the Jcalgora Colliery referred to me the case of Tunnu Sardar and Nilnohan Mishra to arbitration.

I deputed the Labour Commissioner to enquire into the matter and have since received his report. I have carefully gone through the papers filed by the parties and the report of the Labour Commissioner and give my decision as follows:—

- (a) The case of Tunnu Sardar, I agree with the recommendation of the Labour Commissioner as embodied in the concluding part of his report at page 3 that 'the management should either get rid of Tunnu Sardar or direct him to secure the membership of the Union and give a written undertaking to behave well with general workers. The management should also see that work is fairly distributed among the Sardars according to their capacity and special favour is not shown to one or two of them who are not the members of the Union and act against the interest of the Union.'

- (b) The case of Nilmoan Mishra, I accept the advice of the Labour Commissioner that Mr. Mishra in his own interest and for the peace of the colliery should be put for some time on some such duty where he will have as little touch with the general workers as possible.

Sd. B. N. JHA,

18-6-47

On 12th July 1947 in accordance with the award Tunnu Ram Chamar applied for membership and promised that he would not do anything detrimental to the interests of the Union. The Union acknowledged receipt of this application on the 15th July 1947. On 18th July 1947 the Executive Committee of the Union rejected the application for membership on the ground that Tunnu Ram Chamar had shown "anti-relation" spirit towards the Union for "years". On 1st August 1947 a letter was sent by the Workers Union to the company for the discharge of Tunnu Ram Chamar failing which they threatened to go on strike. On 11th August 1947 a letter was sent by the Colliery Superintendent to the Arbitrator. On 23rd September 1947 there was an agreement by Janab Shaw Nawaz the then President of the Union, that the matter be further referred to the Minister *vide* Ex 1(B). On 8th October 1947 Tunnu Ram Chamar's services were dispensed with by the management and this matter was notified on the notice board and Tunnu Ram Chamar must have been aware that his services were dispensed with on that date. Nothing happened between 26th of September 1947 upto 20th October 1948. Then came the interpretation of the award by the Arbitrator. On 11th October 1947 Tunnu's labourers sent in an application to the Prime Minister of Bihar to consider Tunnu's case. Sri Phani Mohan Dutt started an enquiry from 9th December 1947. On 18th February 1948 there is a letter from the Under Secretary to the Government of Bihar to the Regional Labour Commissioner. On 4th April 1948 the miners and loaders of Tunnu Ram Chamar sent an application to the Regional Labour Commissioner against their distribution to other sidars. On 23rd April 1948 the Colliery Superintendent asked Tunnu Ram Chamar to vacate the Dhowras (quarter meant for miners) in his occupation. On 19th June 1948 Tunnu Ram Chamar applied again to the Workers Union that his case be placed before the General Meeting of the Union. On 18th, 16th and 17th September 1948 the clarification came from the Arbitrator. From the minutes of the Regional Labour Commissioner dated 13th, 16th and 17th September 1948 it will appear that the Arbitrator gave the clarification of his award. The clarification is as follows.

"17-9-48: I have placed the entire matter before H. M. Mr. B. N. Jha and he has agreed that the correct interpretation of his award, dated 18-6-47 relating to Tunnu Chamar is that if the Union refuses to allow him to be enrolled as member in spite of his prayer for the same and in spite of his undertaking to be of good behaviour the management should re employ him in spite of the Union's objection, if any."

Sd./ B. M. PRASAD,

I agree with your opinion. Mr. Satya Sen might be informed about this at first.

Sd./ B. N. JHA,
17/9.

On 28th September 1948 Tunnu Ram Chamar again applied for membership to the Union. A resolution was passed on 29th September 1948 rejecting his application. There is a letter of the Workers Union dated 30th September 1948. On 6th October 1948 Tunnu Ram Chamar wrote to the Regional Labour Commissioner complaining that he had received no reply to his application and asked for intervention by the Regional Labour Commissioner. On 20th October 1948 Regional Labour Commissioner wrote to the management explaining the award by the Arbitrator and asking them to re-employ Tunnu Ram Chamar. On 17th February 1949 Tunnu Ram Chamar applied to the Managing Agents of the Company to enforce the award as clarified. He also applied to the Chief Labour Commissioner to the Government of India and the Labour Minister. After this, a reference was made to this Tribunal. Before I conclude the statements of facts I should like to mention that another Union has come into existence of which Tunnu Ram Chamar is a member. This Union is known as Bararee Congress Khan Mazdur Sangh. It was formed on 5th April 1949 and Tunnu Ram Chamar joined it on 9th April 1949. It was registered on 25th June 1949. The register of this Union shows that there were 536 members but the Secretary of the Union also pointed out that there are about 50 more members whose names are not in the register but they have paid their subscription. He showed the receipts to the Tribunal.

4. The case of Tunnu Ram Chamar as made out in his memorandum supported by argument advanced on his behalf by Sri S.S. Mukherjee is that now that he was a member of a registered Union and there was no letter of discharge from the Company and his payment was stopped from November 1947, he should be considered to be still in service but was not being paid by the management. In any case his case is that he should be reinstated. The position taken up by the Company is that they are still reluctant to part with his services. In fact from one of their letters Ex. 1 (A) they took up the attitude that they were satisfied with the attitude taken by Tunnu Chamar after the award inasmuch as he put in an application before the Union for membership and the Company thought that that was enough according to the original award given on 18th June 1947. The Company found no laches on the part of Tunnu Ram Chamar and that the Company was not willing to discharge him till they were forced to by circumstances mentioned above. Therefore really speaking the case of Tunnu Ram Chamar is to a certain extent supported by the attitude taken up by the Company and this was the attitude of the Company even before.

5. The Workers Union on the other hand urges that Tunnu Ram Chamar did not secure membership of the Union as mentioned in the original award of the Arbitrator, and therefore he cannot be reinstated. Reference has been made to the Order passed by the Labour Commissioner on 26th September 1947 (Annexure 'B' of Management's memorandum) which says that as Tunnu Ram Chamar had not succeeded in securing membership of the Union his services should be dispensed with. It is said that it was based on an agreement and it should be given due weight. But it must be remembered that the signatories to the agreement happen to be Mr. R. R. Arnold on behalf of the management and Sri Satva Sen. on behalf of the Workers Union. Sri Sen was an office bearer of the Workers Union. It is not an agreement in which Tunnu Ram Chamar or his representatives were a party.

They further raise the question that Tunnu Chamar should not be considered to be a workman and therefore this matter does not come under the Industrial Disputes Act. They say that he only recruits miners and looks after their interests generally. He is only of assistance to them on occasions of festivities and bereavements. This argument is based upon the definition of workman under Section 2 (s) of the Industrial Disputes Act, 1947.

6. In order to understand the real nature of the work carried on by Tunnuram Chamar and to throw some light upon this part of the argument, I examined Tunnuram Chamar without any previous notice to avoid preparation so as to get an idea as to what his work really was. There is one important statement in his deposition which nullifies the argument advanced by Mr. Paul. Tunnuram Chamar says that he also works as a coal cutter when there is shortage of hands. In cross examination an attempt was made to point out that, as he did not get any bonus on his income nor any sickness allowance it should be held that he is not a workman. So far as coal cutting is concerned the cross examination was confined only to the years 1947 and 1948 when the trouble had already begun and not the previous years. Looking at the statement of Tunnuram Chamar as a whole his statement has not been demolished or rebutted. I am of the opinion that he is a workman and comes well within the definition of Section 2 (s) of the Industrial Disputes Act 1947. This by itself could have disposed of the matter but Mr. Paul has raised another point and he says that there is no dispute within the meaning of the Industrial Disputes Act. Whatever dispute there was it was settled between the Union and the workmen, and the management when the matter was referred to Arbitration originally.

7. 'Industrial Dispute' has been defined in Section 2(k) of the Industrial Disputes Act 1947 which runs as follows:

"Industrial Dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Tunnuram Chamar was an employee and there was a dispute between the employees represented by the Workers Union, the employees represented by the Bararce Congress Khan Mazdur Sangh, and the Management, with regard to his employment. When the enactment uses the word "workman" and defines it and the definition of "Industrial Dispute" contains the expression "any person" it must under the ordinary rules of interpretation be held that "any person" may include people who are not workmen in the defined sense of the term. I do not see any force in this argument and the Central Government was perfectly justified in referring this dispute as an "Industrial Dispute" to this Tribunal.

8. Mr. Paul always emphasised the fact that the real award was the award dated 18th June 1947, and the subsequent clarification should not be taken notice of. Ordinarily speaking there is not much force in this argument because the Arbitrator is not modifying his award. In this particular case the position taken up by Mr. Paul is further weakened by the fact that the clarification came about by a subsequent agreement dated 23rd September 1947 Ex 1(B). That also could under the circumstances be treated as an award by itself but it is not necessary to go so far because I feel that the Arbitrator was justified in clarifying the situation. Now that he is a member of the Union of his choice Tunnuram Chamar need not secure the membership of the Workers Union. I think it is a fit case in which his re-instatement should be ordered.

9. The only question that remains to be discussed is the date from which re-instatement is to be ordered and what should be done with regard to payment for the period from the date of discharge to the date of re-instatement. The only party that brought about the termination of his services is the Workers Union. I have no powers to make them liable for the loss suffered

by Tunnu Ram Chamar nor can I hold the management liable because they tried to resist the discharge of Tunnu Ram Chamar as much as possible against whom they had no charges. I do not think that the company should be made liable for the loss suffered by Tunnu Ram Chamar. My attention was also drawn to a letter of the Chief Labour Commissioner dated 25th February 1949 to indicate the date from which he should get his remuneration but that was before the Union of which Tunnu Ram Chamar claims to be a member was formed and he became a member.

Under the circumstances the only award that I can give is that Tunnu Ram Chamar, Ex-Miner's Sirdar should be re-instated from the date that this award is published.

S. P. VARMA,

*Chairman, Central Government
Industrial Tribunal, Dhanbad.*

DHANBAD,

The 18th August 1949

O R D E R

New Delhi, the 12th September 1949.

No. LR. 4(95).—Whereas by an Order of the Central Government in the Ministry of Labour No. LR. 4(95), dated the 30th June 1949 the industrial dispute between the workmen of the Bararee Colliery, Jealgora, and their management, namely, the East India Coal Company Limited, was referred to the Industrial Tribunal at Dhanbad for adjudication;

And whereas the award made by the said Tribunal has been published by the Central Government in a notification of the Ministry of Labour No. LR. 4(95), dated the 12th September 1949;

Now, therefore, in exercise of the powers conferred by sections 15 and 19 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to direct that the award shall be binding for a period of one year from the date of publication.

S. MULLICK, Dy Secy.